

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

November 9, 1979

Honorable Harold Silverman
Box 336
Calais, Maine 04619

Re: Authority of Town of Crawford to Sell Lots Within
its Public Reserved Lands.

Dear Senator Silverman:

You have requested our opinion with respect to the authority of the Town of Crawford to sell and convey portions of its public reserved lands (also known as public lots or ministerial and school lands). We understand that, pursuant to a 1972 town warrant generally authorizing the sale of such parcels, the Selectmen of Crawford, during the period 1974 through 1978, purported to sell and convey by quitclaim deed some six lake-front parcels, of approximately 3/4 acre each, to various individuals.^{1/} The question that is posed is whether certain 1973 revisions to the laws affecting the public reserved lands prohibited the sale of such lands by towns and therefore prevented the conveyances here at issue from taking effect. As more fully discussed below, we answer this question in the affirmative.

It is now well settled that the public reserved lands so long as held by the State constitute public trustee lands.^{2/} At first, the beneficiaries of such trusts were deemed to be

^{1/} We are informed that among the purchasers of these parcels were two of the then serving Selectmen, their wives, fathers and a brother. While we express no opinion here on the subject, this fact raises possible questions, in addition to those here addressed, as to the propriety of the sales. See 30 M.R.S.A. § 2251.

^{2/} See, e.g., Opinion of the Justices, 308 A.2d 253 (1973).

the first settled minister, the ministry and the school.^{3/} The public reserved lands set aside in the Town of Crawford were initially reserved for such purposes pursuant to the so-called Massachusetts Lottery Act.^{4/} Subsequently, the law was altered to direct that such lands, unless earlier vested in the initially intended beneficiaries, would become vested in the inhabitants of the towns as they became incorporated.^{5/} The Town of Crawford was incorporated in 1828.^{6/} Without determining the matter, we assume, for purposes of reaching the issue before us, that the Town's public reserved lands at issue here were not vested in the initially intended beneficiaries (that is, the ministry and the school) but in fact became vested in the inhabitants of the Town and remained so vested up until the time of the purported dispositions which are the subject matter of this opinion.

Under the law in place prior to 1973, incorporated towns were free to sell all or part of their public reserved lands in accordance with 13 M.R.S.A. § 3164. However, the Legislature in 1973 acted to repeal this provision, together with those relating to the disposition of proceeds on such sales.^{7/} The Legislature established in place of the prior allowance of such dispositions the following direction:

^{3/} See our opinion to Richard Barringer of May 29, 1979, relating to the title of the State to the public reserved lands in the Town of Osborn.

^{4/} Laws and Resolves of Massachusetts, 1786, c. 40. See Book 18A, Page 43, Massachusetts Plan Records, Maine State Archives.

^{5/} See our opinion dated May 29, 1979, supra; State v. Mullen, 97 Me. 331, 54 A. 841 (1903).

^{6/} See Public Laws of 1828, c. 517. The Town was originally named the Town of Adams, although its name was changed to Crawford in the same year. P.L. 1828, c. 561.

^{7/} P.L. 1973, c. 628, effective October 3, 1973.

"Where lands have been granted or reserved for the use of the ministry or first settled minister, or for the use of schools, in any town incorporated and in existence on January 1, 1973, and the fee in these lands has not vested in some particular parish therein or in some individual, it shall vest in the inhabitants of such town and not in any particular parish therein for such uses. The inhabitants of any such town shall hold and enjoy said public reserved lands subject to the control of and subject to responsibilities imposed by the State." 13 M.R.S.A. § 3161 (emphasis added)^{8/}

Given this statutory direction, accompanied by the simultaneous repeal of those laws permitting the sale of public reserved lands by towns, we find as of October 3, 1973 towns, and the inhabitants thereof, no longer possessed the power or authority to enter into such sales. The 1969 statute related to granting home rule powers to towns does not alter this conclusion. That statute specifies that a municipality may by ordinance or bylaw "exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication. . . ." 30 M.R.S.A. § 1917. We find that the Legislature's action taken in 1973 "expressly or by clear implication" prohibited sales of public reserved lands by towns.

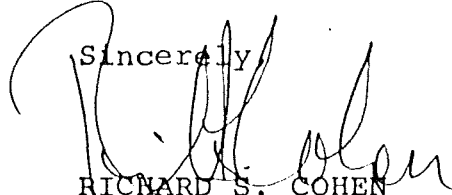
For the foregoing reasons, it is our opinion that the Town of Crawford lacked the power to sell and convey title to parcels within the public reserved lands held by it following 1973. Accordingly, the purported dispositions at issue here are, under current law, void and of no effect.^{9/}

^{8/} "[This] act. . . repealed the power of towns to sell their public lots, thus insuring that in those Maine towns which still possess their public lots, the land will be preserved." Schepps, "Maine's Public Lots: The Emergency of a Public Trust," 26 U. Me. LR 217 (1974).

^{9/} As noted earlier, we understand that the citizens of Crawford apparently voted in 1972 to authorize the Selectmen to sell various portions of the Town's public lots. For purposes of your inquiry, we deem that vote to be legally irrelevant. Notwithstanding the prior vote of its citizens, the Town lost its authority to sell the public lots on October 3, 1973.

If I can be of further assistance in this matter, please let me know.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC/ec

cc: Selectmen of Town of Crawford
William Livengood, Esquire, Maine Municipal Association